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DISTRICT I

July 21, 2026

To:

Hon. Cynthia M. Davis
Circuit Court Judge
Electronic Notice

Evelyn Payne
3621 N. 24th Place
Milwaukee, WI 53206

Robert Rondini
Register in Probate
Milwaukee County Courthouse
Electronic Notice

John Kevin Payne
P.O. Box 16806
Milwaukee, WI 53216

You are hereby notified that the Court has entered the following opinion and order:

2024AP498

In re the estate of John O. Payne: John Kevin Payne v. Evelyn
Payne (L.C. # 2002PR392)

Before Donald, C.J., Colón, P.J., and Geenen, J.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

John Kevin Payne appeals from an order denying his motion to reopen this probate matter. Based upon our review of the brief and record, we conclude at conference that this case is appropriate for summary disposition. See WIS. STAT. RULE 809.21 (2023-24).¹ We summarily affirm.

¹ Evelyn Payne, the respondent in this matter, is deceased. Therefore, no respondent's brief has been filed. By order dated July 17, 2025, we directed the clerk of this court to submit this appeal without a respondent's brief.

(continued)

The underlying probate matter John Kevin seeks to reopen is the Estate of John O. Payne, John Kevin's grandfather, who passed away in 2002. During the probate proceedings, the State filed a claim against the Estate for medical assistance benefits received by John O. The claim was subsequently filed as a Medicaid Estate Lien, in the amount of \$24,450, against John O.'s residential property on North 24th Place in Milwaukee.

Evelyn Payne, John O.'s spouse and personal representative of the Estate, entered into a stipulation in July 2002 regarding the lien. Under the terms of the stipulation, the lien was to be paid in full upon the death of Evelyn, or if the property was sold during Evelyn's lifetime.

Evelyn passed away in 2010. John Kevin's father, John Larry Payne, continued to live in the property.

In June 2023, John Kevin filed a motion with the circuit court seeking to reopen this probate matter on the grounds that the lien stipulation was invalid. At a hearing on the motion, held in February 2024, John Kevin argued that Evelyn, his grandmother, had not been competent to enter into the stipulation because she was suffering from dementia at the time. John Kevin therefore sought to reopen the probate matter so that it could be "administered properly."

Under some circumstances, summary reversal may be appropriate as a sanction for a respondent's failure to file a brief, such as when "bad faith, egregious conduct, or a litigant's abandonment of the appeal" has been demonstrated. *Raz v. Brown*, 2003 WI 29, ¶18, 260 Wis. 2d 614, 660 N.W.2d 647. Here, however, there has been no such conduct. Furthermore, we conclude that we are able to reach a decision in this matter without a respondent's brief. Therefore, judicial interests would not be served by summarily reversing the circuit court's order on procedural grounds.

All references to the Wisconsin Statutes are to the 2023-24 version.

The circuit court stated that it required “a good valid reason, to reopen an estate that’s been closed for 22 years.” The court observed that John Kevin had provided no evidence that Evelyn was suffering from dementia at the time of the stipulation. The court further stated that the doctrine of laches applied to preclude John Kevin’s claim, given the length of time the Estate was closed before the motion to reopen was filed. Finally, the court explained that John Larry, as Evelyn’s heir to the property, may have legal standing to challenge the State’s lien, and that it is not necessary to reopen the probate matter for him to do so.

Therefore, the circuit court denied the motion to reopen the probate matter. This appeal follows.

Once an estate is closed, it may be reopened in accordance with the provisions of WIS. STAT. § 806.07. ***Kaiser v. Townline CTH-N LLC***, 2024 WI App 59, ¶35, 414 Wis. 2d 50, 13 N.W.3d 251. We review the circuit court’s decision regarding such a motion for relief under the erroneous exercise of discretion standard. ***State ex rel. Cynthia M.S. v. Michael F.C.***, 181 Wis. 2d 618, 624, 511 N.W.2d 868 (1994). A discretionary decision will not be overturned “if the record shows that ... there is a reasonable basis for the court’s determination.” ***Id.***

Under WIS. STAT. § 806.07, the circuit court may grant a party’s motion for relief from a judgment, order, or stipulation for a variety of reasons. Such reasons include mistake, inadvertence, surprise, or excusable neglect; or fraud, misrepresentation, or other misconduct of an adverse party. Sec. 806.07(1). Both of these reasons require a motion for relief to be filed within one year of the judgment, order, or stipulation being entered. Sec. 806.07(2). Furthermore, a motion seeking relief for any other reason listed in § 806.07(1) “shall be made within a reasonable time” by the party seeking the relief. Sec. 806.07(2).

Determining what constitutes a reasonable time “requires a case[-]by[-]case analysis of all relevant factors” and “requires courts to strike a balance between the competing values of finality and fairness.” *Cynthia M.S.*, 181 Wis. 2d at 626-27. Factors relevant to this analysis will therefore vary, “but they will undoubtedly include the reasons for the moving party’s delay and the prejudice to the party opposing the motion.” *Kaiser*, 414 Wis. 2d 50, ¶46 (citation modified).

John Kevin’s motion to reopen did not reference WIS. STAT. § 806.07, nor any of the reasons enumerated in § 806.07(1). Additionally, rather than a reasonable time analysis pursuant to § 806.07, the circuit court instead invoked the doctrine of laches. Similar to the reasonable time requirement, the doctrine of laches “bars relief ‘when a claimant’s failure to promptly bring a claim causes prejudice to the party having to defend against that claim.’” *Kaiser*, 414 Wis. 2d 50, ¶50 (citation omitted). However, in *Kaiser*, this court noted that “the probate code expressly incorporates WIS. STAT. § 806.07 as the applicable standard for deciding whether to reopen an estate.” *Kaiser*, 414 Wis. 2d 50, ¶49. Therefore, those “existing statutory provisions,” such as the reasonable time standard, should be followed, as opposed to applying laches, which we observed is typically utilized in situations where there are no statutory guidelines. *Id.*

Nevertheless, the circuit court here, in applying laches, considered factors relevant to the analysis for the reasonable time requirement of WIS. STAT. § 806.07(2). In particular, the court discussed John Kevin’s delay in bringing the motion, as well as potential prejudice to the State. See *Kaiser*, 414 Wis. 2d 50, ¶46. It established that after Evelyn passed away in 2010, John Larry continued living in the property with knowledge of the State’s lien against it, but failed to

make any payments to the State to resolve the lien. In fact, John Kevin informed the court that the State had recently commenced an eviction action against John Larry.²

The court observed the “significant amount of time”—22 years—that the probate matter had been closed. It found that the State had relied on the stipulation “to essentially, withdraw its claim, in exchange for a lien against the property.” As such, it found it would be “extremely prejudicial and unfair” to allow a party to now “attack that stipulation” over 20 years later.

We agree. As the circuit court noted, John Kevin provided no evidence to support his allegation that Evelyn was not competent to enter into the stipulation. Furthermore, he provided no reason for waiting over 20 years to challenge the stipulation. Indeed, John Kevin’s appellate brief includes extensive arguments relating to the lien, but he provides no argument regarding the reasonableness of his delay in seeking relief. “We will not abandon our neutrality to develop arguments” for parties. *Industrial Risk Insurers v. American Eng’g Testing, Inc.*, 2009 WI App 62, ¶25, 318 Wis. 2d 148, 769 N.W.2d 82.

² According to this court’s records, the State commenced the eviction matter, Milwaukee County Circuit Court Case No. 2023SC14804, in June 2023, seeking to remove John Larry from the property. A judgment of eviction was entered in February 2024. John Larry filed a notice of appeal in May 2024, past the statutory filing deadline. The appeal was therefore dismissed for lack of jurisdiction.

Prior to that, a foreclosure action on the property was commenced by the State in Milwaukee County Circuit Court Case No. 2015CV3711, with John Larry as the named defendant. A sheriff’s deed was filed in December 2017, as was an order confirming the sheriff’s sale. John Larry filed a motion seeking to reopen the case in December 2023, which was denied by the circuit court in February 2024. He appealed that decision; however, the appeal was dismissed due to his failure to pay the filing fee, after providing him with several opportunities to do so.

John Kevin’s motion to reopen the probate case was filed in June 2023, which appears to coincide with proceedings in the foreclosure and eviction matters. To the extent the Paynes may be attempting to circumvent the appeal process by seeking relief in the probate matter due to the dismissal of their appeals in the foreclosure and eviction matters, they have provided no legal basis to do so, see *State v. Armstead*, 220 Wis. 2d 626, 641-42, 583 N.W.2d 444 (Ct. App. 1998), and we decline to reconsider the dismissed appeals.

In short, the record demonstrates that there is a reasonable basis for the circuit court's denial of John Kevin's motion to reopen the probate matter. See *Cynthia M.S.*, 181 Wis. 2d at 624. We therefore affirm.

Upon the foregoing,

IT IS ORDERED that the order is summarily affirmed. See WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Samuel A. Christensen
Clerk of Court of Appeals